United States Court of Appeals

for the Second Circuit

PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

74-2700

NORMAN A. PLOTKIN,

Petitioner,

-against-

THOMAS P. GRIESA, United States District Judge, WEST SIDE FEDERAL SAVINGS & LOAN ASSOCIATION, ALLEGHENY MUTUAL CASUALTY CO., THE NEW YORK TIMES CO.,
Respondents,

Norman A. Plotkin,
Plaintiff
v.
West Side Federal Savings & Loan Association, et al.
Defendants.

PETITION FOR A REHEARING

Note: A supplementary Habeas Corpus Memorandum follows after the last page of the Memorandum of Law.

GENE CRESCENZI
Attorney for Petitioner
415 Lexington Ave.
New York, N.Y. 10017
(212) MU-2-1686

PETITION FOR A REHEARING

To the Honorable Judges of the Court of Appeals:

Your petitioner, NORMAN A. PLOTKIN, by his attorney, GENE CRESCENZI, hereby petitions for a rehearing, pursuant to Rule 40 of the Federal Rules of Appellate Procedure, of the Petition for a Writ of Prohibition and Mandamus herein, filed on December 31, 1974.

1. While the form of this petition, pursuant to Rule 40, is for a re-hearing, petitioner is in fact requesting a first hearing, as none has been had in that no answer from respondents was ordered, pursuant to Rule 21, and petitioner hereby requests same.

2. The points of law overlooked or misapprehended by this Court, in the opinion of the petitioner, are more particularly set forth in the Memorandum of Law that accompanies this petition. These points include: the statutory requirements for disqualification of a judge, and case law governing same; the written notice of motion requirement of the Federal Rules of Civil Procedure, both with respect to time and subject matter, as vital to due process; and the subject matter jurisdiction of the District Court in the action herein, as determined by statute and case law.

A further point of law overlooked or misapprehended is one that is implicit in petitioner's cause of action as set forth in the complaint herein: petitioner is entitled to relief by a Writ of Habeas Corpus in these circumstances. Petitioner hereby explicitly claims to be entitled to this relief and requests that he be permitted to amend the complaint herein, adding necessary defendants, in order to request same explicitly.

Petitioner further respectfully submits that the prejudicial disposition of the complaint herein by Judge Griesa effectively bars application for habeas corpus, as the facts in both are the same, until said judge is disqualified, and another judge assigned to hear this cause.

3. The points of fact overlooked or misapprehended by this Court, in the opinion of petitioner, are to be found in many paragraphs of the complaint herein, a copy of which is appended to the Memorandum of Law submitted with this petition. (The complaint itself was not previously put before the Court.) The following are noted particularly:

a- The kidnapping of petitioner was accompanied by torture (see paragraph 30).

b- The wrongs of respondent (defendant herein) Allegheny Mutual Casualty Company included a kickback scheme to the police court clerk (see paragraph 31).

c- Due process was denied petitioner (plaintiff) throughout.

d- J.I. Kislak, Inc. actively participated in the conspiracy directed against petitioner (plaintiff) personally (see paragraphs 8 and 10a).

e- Wrongs of New York Times Co. (see paragraphs 11 and 12) are actionable, as alleged, and would not be countenanced if committed by a less prominent and influential wrongdoer.

f- The wrongs of respondent (defendant) West Side Federal Savings and Loan Association (see paragraph 32) consist of collusion with the wrongdoer Allegheny Mutual Casualty Company.

4. A further point of fact overlooked is that set forth in paragraph 3 of the complaint herein. Petitioner has been made the victim of a police conspiracy in reprisal for exposing official wrongdoing.

Evidence of petitioner's good faith, and of wrongdoing at the highest level of government and private banking institutions, is found in the affidavit of Gene Crescenzi, petitioner's attorney, showing that a official court decision is baselessly and scandalously defamatory, to the benefit of the Chase Manhattan Bank (see attached exhibit). Petitioner has established by research that the means by which such official wrongdoing was accomplished was employment by the Chase Manhattan Bank of the son of the then Administrative Judge of the Kings County Supreme Court, one Miles F. McDonald, Jr.

5. Petitioner has previously prosecuted pro se an action in the Southern District and, on appeal, in this Court, Plotkin vs. Silver, et. al., brought on by an Order to Show Cause by the Honorable Edward Weinfeld, United States District Judge, in circumstances directly related to those described in the preceding paragraph. (The complaint, affidavit and Order are appended to the Memorandum of Law herein, as further illustration of these abuses.)

6. The defendants in the companion action against the Harlem Savings Bank mentioned in the original petition, in paragraph 6, include J.I. Kislak, Inc., and Charles N. Kors. This is the same Charles N. Kors directly responsible for the police-kidnapping complained of herein, who is, in this companion action, directly implicated in the churning operation of J.I. Kislak, Inc., by promoting a foreclosure of the subject real property, thereby unlawfully completing his police real-estate larceny against petitioner, as victim.

7. If this conspiracy is not stopped, there is immediate danger that petitioner will be irreparably damaged by loss of his property to this conspiracy, with all relief denied, as moot.

8. Petitioner has also been inquiring into official wrongdoing by the Federal Bureau of Investigation and others in the trial and execution, in 1953, for espionage, of the Rosenbergs.

9. Petitioner has been advised by an attorney retained by him in the District of New Jersey that he cannot bring a related law suit filed there to trial because the judge will think he is "crazy".

10. Petitioner's need for relief herein is of the utmost gravity and urgency. Judge Griesa's denial, without due process, of this relief, effectively makes lawless police dictatorship the de facto law of the land. Without this relief, there is no redress from the terrible unchecked power of the police. 28 U.S.C. sect 1983 is the remedy for such abuse.

Petitioner has been denied injunctive relief in the pro se action mentioned in paragraph 5 hereinabove on the grounds that he was not deprived of his liberty. The terrible consequence of that denial is precisely that petitioner has been deprived of his liberty. Yet relief is still denied.

WHEREFORE, petitioner requests that this petition for a rehearing be granted, that the Writ of Prohibition and Mandamus issue as requested, and that a Writ of Mandamus further command the District Court to permit amendment of the complaint herein, adding necessary defendants, in order to request relief by a Writ of Habeas Corpus, or in the alternative that this Court certify to the Supreme Court the following questions:

1- Upon the filing of said affidavit of prejudice, did Judge Griesa have the lawful right to continue to proceed further in the matter?

2- Shall Judge Griesa disqualify himself in the matter on the grounds that under Public Law 93-512, as amended on December 12, 1974, "his impartiality might reasonably be questioned," as this is a case of first impression?

3- Are the motions for dismissal made without written notice, or any notice of motion, expressly invited by Judge Griesa and immediately decided by him at a conference, without possibility of refutation or briefing by plaintiff, lawful under the Federal Rules of Civil Procedure and constitutionally required due process?

Dated: January 21, 1975

GENE CRESCENZI
Attorney for Petitioner
415 Lexington Avenue
New York, N.Y. 10017
(212) MU 2-1686

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

NORMAN A PLOTKIN, being duly sworn, deposes and says: deponent is the petitioner in the within petition; deponent has read the foregoing petition and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

DATED: January 21, 1975

Norman A. Plotkin
NORMAN A. PLOTKIN

Sworn to before me this
21 day of January, 1975
Gene Crescenzi

GENE CRESCENZI
Notary Public, State of New York
No. [illegible]
Qualified in Bronx County
Commission Expires March 30, 1976

DE CASTRO *v.* CITY OF N. Y. [54 Misc 2d 1007]

ANGEL DE CASTRO, Plaintiff, *v.* CITY OF NEW YORK et al., Defendants.

Supreme Court, Special Term, Kings County, October 3, 1967.

Briefly, the facts reveal that the plaintiff was employed by the defendant, the Chase Manhattan Bank, as an IBM operator. During the course of his employment, the plaintiff claimed he had smelled a noxious substance in the area and complained about it. Thereafter, the Chase Manhattan Bank caused the plaintiff to be examined by a psychiatrist. He was then certified as dangerous by said psychiatrist and the defendant, Dr. Norman, the medical director of the Chase Manhattan Bank. The aforesaid doctors and the Chase Manhattan Bank, according to the plaintiff, then caused his arrest by members of the Police Department of the City of New York. As a result thereof, plaintiff was kept in the Kings County mental ward from April 21, 1964 to May 26, 1964. It is asserted by the plaintiff that his arrest and detention at the hospital was illegal and improper and that the defendants acted in concert and conspired to bring about his confinement and incarceration at the Kings County Hospital and certify him to a State hospital because of his threatened legal action.

EXTRACT OF THE DECISION, ON MOTION, BY THE HON. LOUIS B. HELLER, JUSTICE OF THE SUPREME COURT, STATE OF NEW YORK, SUMMARIZING DE CASTRO'S CAUSE OF ACTION RESULTING FROM DEFENDANTS' POLICE INCERATION OF HIM AFTER HE MADE A WORKMEN'S COMPENSATION CLAIM

EXHIBIT
Page 1
(Refer to paragraph 4 of the Petition for a Rehearing and to page 2 of this Exhibit.)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

GENE CRESCENZI, being duly sworn, deposes and says:

In response to the inquiries of Mr. Norman Plotkin in reference to the Angel DeCastro matter, which matter I recall as set forth herein.

Mr. DeCastro, a clerical employee of Chase Manhattan Bank, complained of physical symptoms and noxious odors at the place of his employment.

Drawing on his experience in chemical warfare, acquired during military service, he purchased an inexpensive pumping device and collected an air sample of the area in which he was employed.

I recall that he took this air sample to a laboratory for analysis for noxious substances.

I also recall that the laboratory report was that the laboratory animals exposed to the air had died as a result of this exposure.

I had on a number of occasions represented Mr. DeCastro as his lawyer.

GENE CRESCENZI

Sworn to before me this 16th day of July, 1971.

DINO F. ZAMUNER
Notary Public, State of New York
No. 31-4570125
Qualified in New York County
Term Expires March 30, 19

ORIGINAL OF THIS AFFIDAVIT SUBMITTED TO U.S. COURT OF APPEALS, SECOND CIRCUIT, FOR ORAL ARGUMENT IN 71-1462, PLOTKIN v. SILVER, ET AL., OCT. 19, 1971, BEFORE THE HON. MEDINA, MANSFIELD, and MULLIGAN.

EXHIBIT